

CASE – MOOT COURT COMPETITION 2021

BACKGROUND FACTS

The APPLICANTS are Families A, B, C and D, all residents and nationals of the country of FREELAND. They are the families of four individuals that were killed during a series of recent protests in the country.

FREELAND is a member of the European Union and has signed and ratified the European Convention on Human Rights (ECHR) and all of its protocols. It currently sits on the United Nations Human Rights Council and is a state party to most of the major UN treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

SOCIALNET is a private online social media networking company. It is based in the United States but operates globally, including throughout the European Union and in Freeland, where it is very popular. By utilizing their personal accounts, individuals can connect with other users, share information, and organize events. Groups and organizations, both private and public, may use SOCIALNET in the same way.

CIRCUMSTANCES OF THE CASE

Approximately a year ago, a protest against Freeland's immigration policies took place in the country's capital. It was organized by a group on SocialNet called Freeland Patriots, which appeared to have connections to a few nationalist anti-immigration groups. The organizers obtained a permit from the city to hold the event. The protest, which attracted about 1,000 people, turned violent after a skirmish erupted between the protesters and a group of counter-protesters. The protesters broke the windows of several shops in the downtown area and attacked the counter-protesters, resulting in a number of injuries. Following this incident, the government of Freeland condemned the violence, and several of the protesters who could be identified were arrested and charged with crimes, including property damage and assault.

About a month later, Freeland Patriots advertised another protest on its SocialNet page. Individual members of the group on SocialNet posted comments such as "Let's finish what we started last time!!" and others promoted the use of force if any resistance was met. The protest took place as scheduled. As with the previous protest, the organizers had obtained the necessary permits from the city to hold the event. Having gotten wind of it, additional police were sent to the area in advance of the protest. The protest began with an angry rally that stirred up the gathered crowd, which then proceeded to march through the city. The protesters threw rocks and broke the windows of a number of stores and became physically aggressive towards the police assigned to monitor the rally. Two policemen were seriously injured.

Shortly thereafter, an event called "Rally to Save Freeland!" was promoted by various groups on SocialNet. The event organizers had obtained a permit from the city to hold a rally and a subsequent march, with a planned route that included passing by Freeland's parliament building. The event page noted that a number of prominent conspiracy theorists, extreme right-wing politicians, and other well-known figures would be participating. The event

organizers included individuals known to have ties to Freeland Patriots and other fringe groups. A few posts on SocialNet mentioned violence, but most did not. A number of posts discussed methods for avoiding police on the streets and how the protesters should defend themselves if attacked by police. At the rally, the speeches became increasingly inflammatory, with several speakers calling for the protesters to “fight for their rights” and “take action to fight for Freeland.” Following the rally, the protesters started marching. As they passed the parliament building, protesters began throwing rocks at it and breaking windows. They also pulled down statues and attempted to set fire to the building. During the chaos, a policeman was killed, and multiple protesters and bystanders were injured. One person, Mr. A., who was not involved in the protest, was killed when he intervened to try to put out the fire. He was attacked by the protesters, who beat him and threw him to the ground where he was trampled by the crowd. The police were able to identify the individual protesters involved in this incident and they were appropriately charged with assault and murder.

In the following months, four additional protests were held in cities around Freelandia, all promoted on SocialNet. All have resulted in further physical violence, leading to the deaths of three individuals, B, C, and D, as well as extensive property damage. Several protesters have been arrested and charged with crimes, including those directly responsible for the deaths of the individuals B, C and D.

In the wake of these events, SocialNet stated that it would closely monitor the Freeland Patriots group page as well as the pages of similar groups on its site and that it would remove any posts or individuals that SocialNet deemed were inciting violence. However, the company declined to ban these groups from its site, noting that the calls for violence were made by individual members of the group through their personal accounts, and not by the group itself or the advertisements for the events. According to SocialNet, the group’s rhetoric did not rise to the level of “hate speech” as it did not directly target any specific groups of individuals.

Freeland’s government expressed unwillingness to shut down SocialNet due to concerns about infringing on freedom of speech. Instead, the government publicly and privately called on the company to remove and ban such groups and posts. SocialNet stated again that it does not condone the posts or the ensuing violence, but that it cannot police all posts and is not responsible for the actions of individual users. Although many of these groups are known to espouse extremist views, the online posts themselves do not directly threaten to harm any specific individuals or groups of individuals, but rather urge supporters to meet and show support for various social and political causes. As such, SocialNet does not believe that such groups and posts meet the standards for hate speech or incitement of violence, which could be grounds for their removal.

Freeland’s parliamentary elections are scheduled for next year. A number of politicians and other leaders in society have expressed a worry concerning the potential increase of the angry rhetoric and violence as the election approaches. SocialNet is a popular online forum for expressing political opinions and there is a growing concern that the site could be used to incite protests and further violence that impacts the election process. Fears are that if protests take place and additional violence occurs, it could stir up nationalist/extremist sentiment in the country and increase political divisiveness and civil unrest. It could lead to the dissemination of misleading or false information and news relating to the election, discouraging scared voters to go and vote, or even result in violence during the election process.

THE CASE

The Applicants consist of the families of individuals A, B, C and D, who were killed during the series of protests. The Applicants submit that there has been a breach of the positive obligations to protect the lives of their deceased family members in that the state has failed to take actions against SocialNet to prevent violence from occurring. They argue that the state was aware that the social media platform was being used to organize and promote the events that led to violence and to the deaths of the Applicants' family members. The state is aware of how SocialNet is used by radical groups to organize and advertise such events and given that the company itself is unwilling to stop this, the Applicants argue that the state has a responsibility to take actions against the company, either by getting SocialNet to remove the groups involved from the site or by preventing SocialNet from operating in Freeland if it refuses to comply with the demand.

The Applicants further submit that the state has an obligation to take steps to prevent violence by extremist groups, and thereby safeguard the lives of those within its jurisdiction. As such, the state has failed to meet that obligation. The state is familiar with the extremist groups in Freeland and has information about which of these groups that have been involved in the recent protests. However, the state has not taken effective measures to prevent these groups from promoting and holding further events, despite being aware that they often lead to violence. Instead, the state continues to allow the events to happen by continuing to issue permits to these groups, allowing them to hold their protests and rallies. Furthermore, the state also continues to allow SocialNet to operate unchecked.

The actions taken by the state, such as providing additional police presence during the protests, have clearly been shown to be inadequate as they were not able to prevent violence from taking place. The Applicants point out that the fact that the state felt that it needed more security measures is proof that the state was aware of the likelihood of violence occurring.

Freeland's position is that it should not be held liable for the Applicants' claims. The state maintains that forcing SocialNet to stop operating in the country would infringe on the freedom of expression. The social media platform is widely used for regular communication and entertainment, including by the state itself to share messages with its residents. Furthermore, the company has made clear that it in no way encourages or supports the violence or the messages of the extremist groups. SocialNet itself can make the decision to remove or ban users of its services but the state cannot order it to do so or stop the company's operations just because the state disagrees with the messages promoted on the site.

Furthermore, the state argues that it would be violating the rights to freedom of expression and freedom of assembly and association if it were to ban specific groups from meeting or organizing public events. The organizers can be fined by the government if they have not applied for and received the proper permits to hold public events, but the government cannot preemptively ban them based on their ideologies or affiliations. While it is tragic that the recent events have turned violent, the state cannot conclude that the events were organized with the intention of causing violence.

The state also points out that the crimes committed during these protests, such as destruction of property, assault, and murder, have all been thoroughly investigated in order to identify the individuals responsible. The perpetrators have subsequently been arrested and prosecuted to the full extent of the law. Moreover, the state has taken steps such as providing additional police and first-aid responders at future events and using police and barriers to separate the

protesters from the general public so as to reduce the likelihood of violent interactions. However, the state is unable to guarantee that violence will not occur. It notes that it is a challenge to police large events and that human conduct is often unpredictable. The state notes that not all of the people participating in the protests were involved in the violence, and not all members of these extremist groups attend the protests. If crimes occur, the state can act to punish the perpetrator(s), but it cannot restrict everyone's fundamental rights if a crime has not yet actually been committed.

The Applicants have tried unsuccessfully to bring a civil lawsuit against the cities in which the protests that killed their family members occurred.

The Applicants maintain that their rights have been violated, both on substantive and procedural grounds. In light of the state's refusal to take further action, the Applicants turn now to the European Court of Human Rights.